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OFFICE OF PETITIONS

In re Application :
Larsen, et al. :
Application No. 09/935,144 : PATENT TERM ADJUSTMENT
Filed: August 21, 2001 :
Dkt. No.: GFM-5213CP6CN :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT-PRE-GRANT," filed May 20, 2008. This matter is being properly treated as a timely filed application for patent term adjustment pursuant to 37 CFR 1.705(b).

The application for patent term adjustment (PTA) under 37 CFR 1.705(b) is **HELD IN ABEYANCE IN PART AND DIMISSED IN PART.**

The Determination of Patent Term Adjustment under 35 USC 154(b), mailed March 5, 2008, indicated a patent term adjustment (PTA) to date of 292 days. The instant application for PTA was timely filed May 20, 2008, prior to issue fee payment. Applicants argue that the adjustment of 292 days should be increased to 680 days.

The instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date of the application. A decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term for Office failure to issue the patent within three years. See, 37 CFR 1.703(b).

Applicants are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of 37 CFR 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Applicants are reminded that if an application is entitled to an adjustment under 35 USC 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 USC 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 USC 154(b)(1)(B) in determining whether periods of delay overlap under 35 USC 154(b)(2)(A).

Thus, any days of delay for Office issuance of the patent more than three years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See, 35 USC 154(b)(1)(B), 35 USC 154(b)(2)(A), and 37 CFR § 1.703(f). See, also, *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

As uncontested by applicants, the application is entitled to an adjustment of 330 days in accordance with 37 CFR 1.702(a)(1).

The reduction of two days in accordance with 37 CFR 1.704(b) in connection with the response filed May 20, 2004 is not in dispute.

The reduction of 58 days in accordance with 37 CR 1.704(b) in connection with the response filed January 7, 2005 is not in dispute.

The reduction of 85 days in accordance with 37 CFR 1.704(b) in connection with the reply filed March 30, 2007 is not in dispute.

The reduction of 90 days in accordance with 37 CFR 1.704(b) in connection with the request for continued examination filed December 28, 2007 is not in dispute.

Applicants contest the adjustment insofar as it relates to the Office's failure to assess a reduction of 91 days in connection with the Notice of Appeal filed February 28, 2006.

As argued by applicants, the adjustment is properly reduced 91 days in accordance with 37 CFR 1.704(b) in connection with the Notice of Appeal filed February 28, 2006. The reduction commenced November 30, 2005 and ended February 28, 2006.

Applicants further contest the adjustment as it relates to the mailing of the non-final Office action on October 4, 2006. Applicants assert that the correct adjustment in this regard is 218 days.

However, the application is not entitled to any adjustment in connection with the mailing of non-final Office action on October 4, 2006. The amendment after final rejection filed November 21, 2005 did not comply with the provisions of 37 CFR 1.113(c). Thus, the provisions of 37 CFR 1.703(a)(3) do not apply. Applicants' proper reply to the final rejection was the Notice of Appeal filed February 28, 2006. Applicants did not file an appeal brief, thus, the provisions of 37 CFR 1.703(a)(4) do not apply. An amendment after final rejection was filed July 14, 2006. The non-final Office action was timely mailed October 4, 2006 within the meaning of 37 CFR 1.702(a)(2) in response to the amendment filed July 14, 2006.


In view thereof, as of the time of allowance, the application is entitled to an adjustment of 330 days less reductions totaling 326 days, or, a net adjustment of four days.

Receipt is hereby acknowledged of the required PTA application fee of \$200.00.

Applicants are further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

This application is being forwarded to the Office of Data Management for processing into a patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.


Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: Adjusted PAIR Calculation

Day : Saturday
Date: 6/20/2009**PALM INTRANET**

Time: 08:18:59

PTA Calculations for Application: 09/935144

Application Filing Date:	08/21/2001	PTO Delay (PTO):	527
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	235
Post-Issue Petitions:	0	Total PTA (days):	4
PTO Delay Adjustment:	-288		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
100	06/20/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		91	
99	06/20/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		197	
91	03/05/2008	MAIL NOTICE OF ALLOWANCE			
90	02/29/2008	ISSUE REVISION COMPLETED			
89	02/29/2008	DOCUMENT VERIFICATION			
88	02/27/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
87	02/27/2008	CASE DOCKETED TO EXAMINER IN GAU			
86	02/27/2008	NOTICE OF ALLOWABILITY			
85	01/18/2008	DATE FORWARDED TO EXAMINER			
84	12/28/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
83	01/18/2008	DATE FORWARDED TO EXAMINER			
82	12/28/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		90	69
81	01/18/2008	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
80	12/28/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
79	12/28/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
78	11/15/2007	MAIL ADVISORY ACTION (PTOL - 303)			
77	11/13/2007	ADVISORY ACTION (PTOL-303)			
75	09/14/2007	DATE FORWARDED TO EXAMINER			
74	09/11/2007	AMENDMENT AFTER FINAL REJECTION			
73	08/07/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
72	03/08/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			

71	07/27/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
70	03/08/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
69	06/29/2007	MAIL FINAL REJECTION (PTOL - 326)			
68	06/25/2007	FINAL REJECTION			
67	06/27/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
66	06/27/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
65	04/11/2007	DATE FORWARDED TO EXAMINER			
64	03/30/2007	RESPONSE AFTER NON-FINAL ACTION		85	62
63	03/30/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
62	10/04/2006	MAIL NON-FINAL REJECTION	197		42
61	09/29/2006	NON-FINAL REJECTION			
60	08/29/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
59	08/24/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
58	07/21/2006	DATE FORWARDED TO EXAMINER			
57	07/14/2006	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
56	07/14/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
55	04/12/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
54	04/10/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
53	03/28/2006	MAIL APPEALS CONF. PROCEED TO BPAI			
52	03/28/2006	PRE-APPEALS CONFERENCE DECISION - PROCEED TO BPAI			
51	03/22/2006	MAIL ADVISORY ACTION (PTOL - 303)			
50	03/20/2006	ADVISORY ACTION (PTOL-303)			
49	03/08/2006	CASE DOCKETED TO EXAMINER IN GAU			
48	02/28/2006	REQUEST FOR PRE-APPEAL CONFERENCE FILED			
47	02/28/2006	NOTICE OF APPEAL FILED			
46	02/28/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
45	02/17/2006	CASE DOCKETED TO EXAMINER IN GAU			

43	12/13/2005	DATE FORWARDED TO EXAMINER			
42	11/21/2005	AMENDMENT AFTER FINAL REJECTION			
41	08/29/2005	MAIL FINAL REJECTION (PTOL - 326)			
40	08/22/2005	FINAL REJECTION			
39	08/05/2005	CASE DOCKETED TO EXAMINER IN GAU			
38	08/04/2005	CASE DOCKETED TO EXAMINER IN GAU			
37	07/15/2005	CASE DOCKETED TO EXAMINER IN GAU			
36	07/11/2005	DATE FORWARDED TO EXAMINER			
35	06/30/2005	RESPONSE AFTER NON-FINAL ACTION			
34	06/28/2005	CASE DOCKETED TO EXAMINER IN GAU			
33	04/08/2005	CORRESPONDENCE ADDRESS CHANGE			
32	04/05/2005	MAIL NON-FINAL REJECTION			
31	04/04/2005	NON-FINAL REJECTION			
30	01/26/2005	DATE FORWARDED TO EXAMINER			
29	01/07/2005	RESPONSE AFTER NON-FINAL ACTION		58	25
28	01/07/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
27	01/24/2005	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
26	01/07/2005	WORKFLOW INCOMING AMENDMENT IFW			
25	08/10/2004	MAIL NON-FINAL REJECTION			
24	08/09/2004	NON-FINAL REJECTION			
23	05/26/2004	DATE FORWARDED TO EXAMINER			
22	05/20/2004	RESPONSE TO ELECTION / RESTRICTION FILED		2	19
21	05/20/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
20	05/20/2004	WORKFLOW INCOMING AMENDMENT IFW			
19	02/18/2004	MAIL SUPPLEMENTAL RESTRICTION / ELECTION REQUIREMENT			
18	02/18/2004	CORRESPONDENCE ADDRESS CHANGE			
17	02/18/2004	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
16	02/18/2004	SUPPLEMENTAL RESTRICTION			
15	10/03/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
14	09/16/2003	MAIL RESTRICTION REQUIREMENT	330		-1
13	09/16/2003	REQUIREMENT FOR RESTRICTION / ELECTION			
12	09/15/2003	CASE DOCKETED TO EXAMINER IN GAU			
11	03/17/2003	CASE DOCKETED TO EXAMINER IN GAU			

10.7	10/22/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	10/22/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	08/21/2001	PRELIMINARY AMENDMENT			
8	01/29/2002	CASE DOCKETED TO EXAMINER IN GAU			
7	01/23/2002	APPLICATION DISPATCHED FROM OIPE			
6	01/22/2002	APPLICATION IS NOW COMPLETE			
4	01/16/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
3	08/21/2001	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
2	08/29/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	08/21/2001	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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